

ATTACHMENT 5

From: Easterlin, Ben [BEasterlin@KSLAW.com]
Sent: Monday, December 03, 2007 5:46 PM
To: Berger, Bruce J.
Subject: RE: deposition scheduling

I think we can produce the F/S in the form you mention; just understand that a DH review may change something slightly. If so, it can be covered in a follow up deposition for the limited purpose of inquiring any revised F/S. At this time, I cannot agree to a further Taylor deposition and reserve the right to object to a NS request for one. However, if there is to be a Taylor deposition, whether or not by agreement, Jan. 11 is fine with me. Taylor is not available today to confirm if he is available on that date, but I will find out later and let you know. Please confirm whether all this means that the Altherr deposition will take place on 12/14.

From: Berger, Bruce J. [mailto:bberger@spriggs.com]
Sent: Monday, December 03, 2007 4:21 PM
To: Easterlin, Ben
Cc: Leone, Frank
Subject: RE: deposition scheduling

Ben,

I am trying to clear a conflict that I have on Dec. 14. As I consider this, could you please clarify a few issues?

First, why can't we go through with the deposition using the F/S in its unreviewed form and why can't you also produce that on Friday? If the Dixon Hughes review requires it to be changed, then we can decide at that time whether any further deposition is necessary, and that would obviously depend upon the changes. I see no reason why we would have to wait until past January to even look at the F/S for FY2007.

Second, we don't necessarily agree with your characterization of NS's position re "separating the non-operating assets from the enterprise value" or with what Taylor/Altherr seem to think the remedy is for this issue. But your comment raises the issue of what other changes there may be in the Taylor report and, frankly, raises the issue of whether we will need to redepose Mr. Taylor as to those changes. I am willing to wait until we take the Rule 30(b)(6) deposition to address whether a further Taylor deposition is necessary, subject to our right to object to any changes or move to strike any revised report. However, can we block off January 11, 2008 as a tentative date for a deposition of Mr. Taylor as to those changes?

Please let me know as soon as possible as I need to change travel plans.

Bruce